

## ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Sections 10.16.030 and 10.16.040 of the Lincoln  
2 Municipal Code by amending penalty provisions for driving under the influence and refusal to  
3 submit to alcohol testing to conform with changes made in state statutes as required by law;  
4 repealing Sections 10.16.030 and 10.16.040 of the Lincoln Municipal Code as hitherto existing; and  
5 establishing an effective date of July 14, 2006.

6           BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7           Section 1. That Section 10.16.030 of the Lincoln Municipal Code be amended to  
8 read as follows:

9       **10.16.030     Under Influence of Alcoholic Liquor; Alcohol in Body Fluid; Penalty.**

10           It shall be unlawful for any person to operate or be in the actual physical control of any  
11 motor vehicle while under the influence of alcoholic liquor, or of any drug, or when that person has  
12 a concentration of eight hundredths (.08) of one gram or more by weight of alcohol per 100 mil-  
13 liliters of his or her blood, or when that person has a concentration of eight hundredths (.08) of one  
14 gram or more by weight of alcohol per 210 liters of his or her breath. Every person who violates this  
15 section shall be guilty of a misdemeanor and, upon conviction, shall be punished as follows:

16           (a)     (1)     If such person has not had a previous conviction for this offense ~~in Nebraska~~  
17 ~~in the twelve years prior to the date of the current conviction, under state law or under a city or~~  
18 ~~village ordinance enacted pursuant thereto~~, such person shall be imprisoned in the county jail not  
19 less than seven days nor more than sixty days, and shall be fined not less than \$400.00 nor more than  
20 \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, order

1 such person not to drive any motor vehicle for any purpose for a period of six months from the date  
2 ordered by the court and shall order that the operator's license of such person be revoked for a like  
3 period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal  
4 or review, or upon the date that any probation is revoked. Such revocation shall not run  
5 concurrently with any jail term imposed. If the court places such person on probation or suspends  
6 the sentence for any reason, the court shall, as one of the conditions of probation or sentence  
7 suspension, order such person not to drive any motor vehicle for any purpose for a period of sixty  
8 days from the date of the order, unless otherwise authorized by an order issued pursuant to *Neb. Rev.*  
9 *Stat.* § 60-6,211.05, and such order of probation shall also include, as one of its conditions, the  
10 payment of a \$400.00 fine.

11 (2) If such person has not had a prior conviction for this offense and, as part of  
12 the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of  
13 alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by  
14 weight of alcohol per two hundred ten liters of his or her breath, the court shall, as part of the  
15 judgment of conviction, revoke the operator's license of such person for a period of one year from  
16 the date ordered by the court. Such revocation shall be administered upon sentencing, upon final  
17 judgment of any appeal or review, or upon the date that any probation is revoked.

18 If the court places such person on probation or suspends the sentence for any  
19 reason, the court shall, as one of the conditions of probation or sentence suspension, order that the  
20 operator's license of such person be revoked or impounded for a period of one year from the date  
21 ordered by the court unless otherwise authorized by an order issued pursuant to *Neb. Rev. Stat.* § 60-  
22 6,211.05, and such order of probation or sentence suspension shall also include, as conditions, the

1 payment of a \$500.00 fine and either confinement in the county jail for two days or the imposition  
2 of not less than 120 hours of community service;

3 (b) If such person has had one conviction for this offense in Nebraska in the twelve years  
4 prior to the date of the current conviction, (i) under state law; (ii) under a city or village ordinance  
5 enacted pursuant thereto; or (iii) under a law of another state, if at the time of the conviction under  
6 the law of another state, the offense for which such person was convicted would have been a  
7 violation under *Neb. Rev. Stat. § 60-6,196*, and as part of the current violation had a concentration  
8 of less than fifteen-hundredths of one gram by weight of alcohol per one hundred milliliters of his  
9 or her blood or less than fifteen-hundredths of one gram by weight of alcohol per two hundred ten  
10 liters of his or her breath, such person shall be imprisoned in the county jail not less than thirty days  
11 nor more than ninety days, and shall be fined \$500.00, recoverable with costs, and the court shall,  
12 as part of the judgment of conviction, order such person not to drive any motor vehicle for any  
13 purpose for a period of one year from the date ordered by the court, and shall order that the  
14 operator's license of such person be revoked for a like period. Such revocation shall be administered  
15 upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation  
16 is revoked. Such revocation shall not run concurrently with any jail term imposed. If the court  
17 places such person on probation or suspends the sentence for any reason, the court shall, as one of  
18 the conditions of probation or sentence suspension, order such person not to drive any motor vehicle  
19 in the State of Nebraska for any purpose for a period of one year from the date of the order unless  
20 otherwise authorized by an order issued pursuant to *Neb. Rev. Stat. §60-6,211.05* and shall issue an  
21 order pursuant to Lincoln Municipal Code Section 10.16.045 with respect to all motor vehicles  
22 owned by such person, and such order of probation shall also include, as conditions, the payment

1 of a \$500.00 fine and either confinement in the county jail for ~~five~~ ten days or the imposition of not  
2 less than 240 hours of community service.

3 (c) For each conviction under this section, the court shall, as part of the judgment of  
4 conviction, make a finding on the record as to the number of the defendant's prior convictions for  
5 this offense in Nebraska in the twelve years prior to the date of the current conviction, ~~under state~~  
6 ~~law or under a city or village ordinance enacted pursuant thereto.~~ The defendant shall be given the  
7 opportunity to review the record of his or her prior convictions, bring mitigating facts to the  
8 attention of the court prior to sentencing, and make objections on the record regarding the validity  
9 of such prior convictions. For purposes of this section, the twelve-year period shall be computed  
10 from the date of the prior offense to the date of the offense which resulted in the current conviction  
11 and the terms "~~conviction for this offense~~" and "prior conviction" shall mean convictions defined  
12 by Neb. Rev. Stat. § 60-6,197.02 ~~include any conviction under this section, under the state law~~  
13 ~~pursuant to which this section was enacted, or under any city or village ordinance enacted pursuant~~  
14 ~~to said state law,~~ as the same existed at the time of such conviction, regardless of subsequent  
15 amendments thereto.

16 (d) The provisions of this section shall apply anywhere throughout the city except private  
17 property which is not open to public access.

18 (e) Any period of revocation imposed under this section shall be reduced by any period  
19 imposed under *Neb. Rev. Stat. § 60-6,206*. Any period of revocation imposed under this section  
20 shall not prohibit the operation of a motor vehicle under the terms and conditions of an employment  
21 driving permit issued pursuant to subsection (2) of *Neb. Rev. Stat. § 60-6,206*.

1                   Section 2. That Section 10.16.040 of the Lincoln Municipal Code be amended to  
2 read as follows:

3       **10.16.040       Chemical Tests; Refusal; Penalty.**

4           (a)     Any person who operates or has in his or her actual physical control a motor vehicle  
5 shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her  
6 blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence  
7 of drugs in such blood, breath, or urine.

8           (b)     Any law enforcement officer who has been duly authorized to make arrests for  
9 violations of traffic laws of this state or of ordinances of any city or village may require any person  
10 arrested for any offense arising out of acts alleged to have been committed while the person was  
11 driving or was in actual physical control of a motor vehicle while under the influence of alcoholic  
12 liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the  
13 purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath,  
14 or urine, when the officer has reasonable grounds to believe that such person was driving or was in  
15 the actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs.

16          (c)     Any law enforcement officer who has been duly authorized to make arrests for  
17 violations of traffic laws of this state or of ordinances of any city or village may require any person  
18 who operates or has in his or her actual physical control a motor vehicle to submit to a preliminary  
19 test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that  
20 such person has alcohol in his or her body, has committed a moving traffic violation, or has been  
21 involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or  
22 whose preliminary breath test results indicate an alcohol concentration in violation of Section

1 10.16.030 shall be placed under arrest. Any person who refuses to submit to such preliminary breath  
2 test shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of  
3 not to exceed \$100.00, recoverable with costs.

4 (d) Any person arrested as provided in subsections (b) and (c) of this section may, upon  
5 the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or  
6 her blood, breath, or urine for a determination of the concentration of alcohol or the presence of  
7 drugs. Any person who refuses to submit to such test or tests required pursuant to this section shall  
8 be guilty of a misdemeanor and, upon conviction, shall be punished as follows:

9 (1) If such person has not had a conviction for this offense ~~in Nebraska~~ in the  
10 twelve years prior to the date of the current conviction, ~~under state law or under a city or village~~  
11 ~~ordinance enacted pursuant thereto~~, such person shall be imprisoned in the county jail for not less  
12 than seven days nor more than sixty days, and shall be fined not less than \$400.00 nor more than  
13 \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, order  
14 such person not to drive any motor vehicle for any purpose in the State of Nebraska for a period of  
15 six months from the date ordered by the court and shall order that the operator's license of such  
16 person be revoked for a like period. Such revocation shall be administered upon sentencing, upon  
17 final judgment of any appeal or review, or upon the date that any probation is revoked. Such  
18 revocation shall not run concurrently with any jail term imposed. If the court places such person on  
19 probation or suspends the sentence for any reason, the court shall, as one of the conditions of proba-  
20 tion or sentence suspension, order such person not to drive any motor vehicle for any purpose for  
21 a period of sixty days from the date of the order, unless otherwise authorized by an order issued

1 pursuant to *Neb. Rev. Stat.* § 60-6,211.05, and such order of probation shall also include, as one of  
2 its conditions, the payment of a \$400.00 fine.

3 (2) If such person has had one conviction for this offense ~~in Nebraska~~ in the  
4 twelve years prior to the date of the current conviction, ~~under state law or under a city or village~~  
5 ~~ordinance enacted pursuant thereto~~, such person shall be imprisoned in the county jail not less than  
6 thirty days nor more than ninety days, and shall be fined \$500.00, recoverable with costs, and the  
7 court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle  
8 in the State of Nebraska for any purpose for a period of one year from the date ordered by the court,  
9 and shall order that the operator's license of such person be revoked for a like period. Such  
10 revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or  
11 upon the date that any probation is revoked. Such revocation shall not run concurrently with any  
12 jail term imposed. If the court places such person on probation or suspends the sentence for any  
13 reason, the court shall, as one of the conditions of probation or sentence suspension, order such  
14 person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of ~~six~~  
15 ~~months~~ one year from the date of the order ~~and such order of probation shall include as one of its~~  
16 ~~conditions confinement in the county jail for forty-eight hours, and the payment of a \$500.00 fine~~  
17 unless otherwise authorized by an order issued pursuant to *Neb. Rev. Stat.* § 60-6,211.05 and shall  
18 issue an order pursuant to Lincoln Municipal Code §10.16.045 with respect to all motor vehicles  
19 owned by such person, and such order of probation shall also include, as conditions, the payment  
20 of a \$500.00 fine and either confinement in the county jail for five days or the imposition of not less  
21 than 240 hours of community service.

1           (3) For each conviction under this subsection, the court shall, as part of the  
2 judgment of conviction, make a finding on the record as to the number of the defendant's prior  
3 convictions for this offense in Nebraska in the twelve years prior to the date of the current con-  
4 viction, ~~under state law or under a city or village ordinance enacted pursuant thereto.~~ The defendant  
5 shall be given the opportunity to review the record of his or her prior convictions, bring mitigating  
6 facts to the attention of the court prior to sentencing, and make objections on the record regarding  
7 the validity of such prior convictions. For purposes of this subsection, the twelve-year period shall  
8 be computed from the date of the prior offense to the date of the offense which resulted in the cur-  
9 rent conviction and the terms "~~conviction for this offense~~" and "prior conviction" shall mean  
10 convictions defined by Neb. Rev. Stat. § 60-6,197.02 ~~include any conviction under this section,~~  
11 ~~under the state law pursuant to which this section was enacted, or under any city or village ordinance~~  
12 ~~enacted pursuant to said state law,~~ as the same existed at the time of such conviction, regardless of  
13 subsequent amendments thereto.

14           (e) Any person arrested for any offense involving the operation or actual physical control  
15 of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit  
16 to a chemical test or tests of his or her blood, breath, or urine, as provided in this section, without  
17 the preliminary breath test if the arresting officer does not have available the necessary equipment  
18 for administering a breath test, or if the person is unconscious or is otherwise in a condition  
19 rendering him or her incapable of testing by a preliminary breath test.

20           (f) Any person who is required to submit to a chemical blood, breath, or urine test or  
21 tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate  
22 crime for which the person may be charged.



1 (g) The provisions of this section shall apply anywhere throughout the city except private  
2 property which is not open to public access.

3 Section 3. That Sections 10.16.030 and 10.16.040 of the Lincoln Municipal Code  
4 as hitherto existing be and the same are hereby repealed.

5 Section 4. That this ordinance shall take effect and be in force from July 14, 2006.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2006:

\_\_\_\_\_  
Mayor